

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff-Respondent,

v.

Case No. 16-12300

MAURICE GHOLSTON

HON. AVERN COHN

Defendant-Petitioner.

/

**ORDER DENYING PETITIONER'S "MOTION TO RECALL THE DENIED ORDER OF
28 U.S.C. § 2255 FOR GOOD CAUSE SHOWING (Doc. 80)
AND
GRANTING PETITIONER THIRTY (30) DAYS FROM THE DATE OF THIS ORDER IN
WHICH TO FILE OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND
RECOMMENDATION**

This is a case under 28 U.S.C. § 2255. Petitioner Maurice Gholston (Petitioner), proceeding pro se, plead guilty under a Rule 11 agreement. He was sentenced to 24 months imprisonment for violation of 18 U.S.C. § 1951(a) - Interference With Commerce by Robbery and 24 months imprisonment violation of 18 U.S.C. § 924(c) - Use of a Firearm During the Commission of a Violent Act, to run consecutively. Petitioner did not file a direct appeal. Instead, he filed a motion under 28 U.S.C. § 2255. His sole ground for relief was that the Court unlawfully applied 18 U.S.C. § 924(c), particularly in light of the Supreme Court's recent decision in Johnson v. United States, 135 S.Ct. 2551 (June 26, 2015). He requested that the Court vacate his 48 month sentence and resentence him to 24 months. The government argued that the motion was untimely and lacked

merit.

The motion was referred to a magistrate judge (Doc. 69). The magistrate judge issued a report and recommendation (MJRR), recommending that the motion be denied for lack of merit and that the Court decline to rule on whether the petition was timely filed. (Doc. 74). The MJRR was issued on September 30, 2016 and mailed to Petitioner at his then current address. However, after the MJRR was returned as undeliverable and Petitioner filed a notice of change of address, the MJRR was mailed to Petitioner at his proper address. Petitioner admits he received the MJRR on December 6, 2016. Petitioner did not file objections within the 14 days permitted in the MJRR.

A month later, on January 6, 2017, the Court issued an order adopting the MJRR. The Court noted that Petitioner received the MJRR on December 6, 2016 and had not filed objections. (Doc. 78 p. 1. n.1).

On January 31, 2017, Petitioner filed the instant motion to “recall the denied order.” From what can be gleaned, Petitioner says that the prison library was closed for most, if not all, of December and part of January and he was therefore unable to prepare objections. He asks for a sixty day extension.¹

The motion to “recall the order” is DENIED. However, Petitioner shall have thirty (30) days from the date of this order in which to file objections to the MJRR. The Court cautions Petitioner that the magistrate judge carefully explained the state of the law on whether a Hobbs Act robbery conviction implicates Johnson, concluding it does not.

¹The case was recently reassigned to the undersigned due to the retirement of the judge to whom it was originally assigned.

The Supreme Court's recent decision in Beckles v. United States, 15-8544 (Sup. Ct. Mar. 6, 2017), a copy of which is enclosed, lends further support to the Magistrate Judge's analysis and conclusion. In Beckles, the Supreme Court held that the Federal Sentencing Guidelines, including §4B1.2(a)'s residual clause, are not subject to vagueness challenges under the Due Process Clause. Be that as it may, Petitioner may file objections **within thirty days or on or before April 27, 2017**.

SO ORDERED.

S/Avern Cohn _____
AVERN COHN
UNITED STATES DISTRICT JUDGE

Dated: March 27, 2017
Detroit, Michigan